
CHAPTER: Administration

SECTION: Reaching Conclusions and Closing the Examination

Section 120

Introduction

This section discusses reaching conclusions about the association's compliance management function and regulatory findings, and closing the on-site portion of the examination.

Reaching Conclusions

The ability to formulate conclusions, prioritize findings, and communicate those findings to directors management and OTS personnel is crucial to the supervisory process. For examinations and supervisory analyses to be most effective, conclusions must be drawn from a comprehensive analysis of patterns and practices. Although individual violations of a substantive nature must be dealt with, it is attention to the pattern or practice that will enhance future compliance.

As individual examination components are completed and workpapers compiled, the examiner should begin to formulate an impression of the association's overall compliance posture. The development of examination conclusions, in preparation for the closing conference with senior management, involves:

- Reviewing all major findings from the examination (including trends);
- Considering the association's operating environment;
- Transforming the assembled information into a unified assessment of the association's compliance position, which assessment will be presented in the compliance report of examination and converted into ratings;
- Communicating the results effectively; and
- Facilitating the corrective action process.

When determining what weight a particular practice or other factor should be given in the overall conclusion, the examiner should consider the potential future effect of that factor, as well as the

past and present effects. One of the goals of the supervisory process is to maximize future compliance. Therefore, it may be appropriate to judge compliance deficiencies that have been corrected prior to or during the course of the examination less severely than deficiencies still uncorrected.

In making conclusions, the examiner should structure the process to first form an assessment of the compliance management function of the association. Conclusions should be reached about the effectiveness of the compliance program, the personnel assigned to the compliance function, training programs dealing with compliance issues, policy deficiencies and the severity of individual violations of laws and regulations, focusing more attention on those of a systemic nature that result from program weaknesses.

Closing Management Conference

The closing conference between the examiner and the association brings the on-site portion of the compliance examination to an end. If the examination has been conducted in the proper atmosphere of open communication and cooperation, there should be few surprises for either party at the closing conference. The association's key personnel in affected operating areas up to and including senior officers should already have been given the opportunity to respond to specific issues raised throughout the examination, with those responses factored into the examiner's conclusions. Only rarely will some significant fact come to light at the closing conference that changes those conclusions.

The objective of the closing conference is to communicate clearly the examiner's findings and recommendations and to obtain senior management's responses. It is also an opportunity to again impress upon management the seriousness of compliance. If compliance performance has been exemplary, the examiner's job is made much easier, but the need for the association to maintain that exemplary performance level should nonetheless be stressed.

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Section 120

When material deficiencies and violations exist, the examiner must present these diplomatically but firmly, in a manner that leaves no doubt as to the seriousness of the problem. An effective way to present examination findings is to discuss the most serious or difficult deficiencies relating to the compliance management first, then follow with specific regulatory issues.

Nonsubstantive technical violations and other violations found during the examination that were deemed isolated, truly inadvertent, or not indicative of the association's practices need not be discussed during the closing conference. However, notations of these items should be provided to the compliance officer for information purposes during the course of the examination.

The examiner should plan in advance that the discussion of CRA performance will not only highlight deficiencies noted during the examination, but also include specific suggestions of ways in which the association can improve future CRA performance. While these suggestions are not dictates, as management must decide how to handle its CRA responsibilities, encouraging improved performance with appropriate practical advice is consistent with the objectives set out in the CRA statute.

The closing conference should leave management with a firm understanding of what items will appear in the report of examination, and what the overall tone of the report will be. When the closing conference is handled correctly, management should not be surprised by the content of the report when it arrives. The EIC, after stating that the ratings may not be final, should disclose preliminary compliance and CRA ratings with management at the conclusion of the examination, per Regional policy. In this discussion, the EIC must stress that the ratings are preliminary and subject to change until the examination report is issued.

Contact with Board of Directors

Examiners should meet with boards of directors of adversely rated institutions following the conclusion of the examination.

An "adversely rated institution" includes institutions that receive:

- a compliance rating of 4 or 5, or a CRA rating of Needs to Improve or Substantial Noncompliance; or
- a compliance rating of 3 if the rating represents a downgrade from the prior examination. Generally, examiners should meet with boards of directors of all 3 rated institutions; however, Examiners-In-Charge, with the concurrence of the Compliance Exam Manager and/or Assistant Regional Director, have discretion in determining whether such a meeting would be necessary or appropriate in those cases which the 3 rating is not a downgrade from the prior examination.

Because of the value of meetings with boards of directors noted by institution management and the OTS, such meetings with non-adversely rated institutions are encouraged, particularly if the Examiner-In-Charge notes adverse trends, increased risk profile, or other matters which need to be brought to the attention of the board. If no such issues exist, the Examiner-in-Charge should honor any request from management to forgo a meeting with the board.

For non-adversely rated institutions over \$1 billion, meetings with the boards of directors should be held, whether or not adverse trends are present. A request from management to not hold a meeting may only be honored after consultation with the Compliance Exam Manager or Assistant Regional Director.

Examiners-In-Charge should discuss this policy with the institutions management during examination entrance interviews, or at other appropriate times during the course of the examination, and schedule a mutually agreeable, convenient date and time to hold a meeting with the board of directors. Generally, it is expected that such meetings would be held in conjunction with an institution's regularly scheduled board meeting following the completion of the examination; however, in some situations it may be convenient to all parties to schedule the meeting during the course of the examination.